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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

10 UNITED STATES OF AMERICA,)
11 Plaintiff,)
12 v.)
13 STATE OF WASHINGTON)
14 (Department of Transportation))
15 Defendant.)

C86- 63M -

CIVIL ACTION NO.

COMPLAINT

17 The United States of America ("Plaintiff"), by and
18 through its undersigned attorneys, by the authority of the Attorney
19 General of the United States, and at the request of the Administrator
20 of the United States Environmental Protection Agency ("EPA"),
21 alleges that:

INTRODUCTION

22
23 1. This is a civil action for violations of the Clean
24 Air Act, 42 U.S.C. § 7401, et seq., and EPA regulations promulgated
25 thereunder concerning asbestos emissions by defendant, the

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1 State of Washington (Department of Transportation), in connection
2 with the renovation of the Coleman Ferry Terminal, Pier 52, Seattle,
3 Washington.

4 2. Plaintiff seeks to enjoin defendant from further
5 violating the National Emission Standard for Hazardous Air
6 Pollutants ("NESHAP") for asbestos promulgated by EPA under
7 Section 112 of the Clean Air Act, 42 U.S.C. § 7412, 40 C.F.R.
8 Part 61. Plaintiff also seeks the assessment of civil penalties
9 for defendant's violations of these regulations and its costs and
10 fees in this action.

11 JURISDICTION AND PARTIES

12 3. This Court has jurisdiction over the subject matter
13 of this action under Section 113(b) of the Clean Air Act, 42
14 U.S.C. § 7413(b) and under 28 U.S.C. §§ 1331, 1345, and 1355.

15 4. Notice of the commencement of this action has been
16 given to the State of Washington as required by 42 U.S.C. § 7413(b).

17 5. Venue is proper in this District under Section 113(b)
18 of the Clean Air Act, 42 U.S.C. § 7413(b), and under 28 U.S.C.
19 § 1391(c) as the place in which the violations occurred.

20 6. Defendant State of Washington is a sovereign state.
21 Defendant owns and operates, through its agency the Department of
22 Transportation, a facility known as the Coleman Ferry Terminal,
23 located at Pier 52 in Seattle, Washington. The Coleman Ferry
24 Terminal is the location of the renovation that is the subject of
25 this litigation. Defendant, State of Washington, is a "person"

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1 as defined by 42 U.S.C. § 7602(e), within the meaning of 42 U.S.C.
2 § 7613(b).

3 THE ASBESTOS NESHAP

4 7. Section 112 of the Clean Air Act, 42 U.S.C. § 7412,
5 authorizes the Administrator of EPA to publish a list of air
6 pollutants determined to be hazardous and to prescribe emission
7 standards for those pollutants. These standards are known as
8 National Emission Standards for Hazardous Air Pollutants
9 ("NESHAP").

10 8. EPA listed asbestos as a hazardous air pollutant
11 under the authority of Section 112 of the Act, 42 U.S.C.
12 § 7412(b), and also adopted an asbestos NESHAP that is codified
13 at 40 C.F.R. Part 61, subpart M.

14 9. Section 112(c) of the Clean Air Act, 42 U.S.C.
15 § 7412(c), prohibits the emission of any air pollutant to which
16 a NESHAP applies, from any stationary source, in violation of
17 such NESHAP. Noncompliance with a NESHAP is a violation of
18 Section 112(c) of the Act.

19 10. 40 C.F.R. § 61.02 defines "owner or operator" as
20 "any person who owns, leases, operates, controls or supervises
21 a stationary source."

22 11. 40 C.F.R. § 61.02 defines "stationary source" as
23 "any building, structure, facility, or installation which emits
24 or may emit any air pollutant which has been designated as
25 hazardous by the Administrator."

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1 12. 40 C.F.R. § 61.141 defines "friable asbestos
2 material" as "any material that contains more than 1 percent
3 asbestos by weight and that hand pressure can crumble, pulverize,
4 or reduce to powder when dry."

5 13. 40 C.F.R. § 61.141 defines "demolition" as "the
6 wrecking or taking out of any load-supporting structural member
7 of a facility together with any related handling operations."
8 The same section also defines "renovation" as "altering in any
9 way one or more facility components"

10 14. 40 C.F.R. § 61.141 defines "particulate asbestos
11 material" as "finely divided particles of asbestos material."
12 That same section also defines "asbestos material" as "asbestos
13 or any material containing asbestos."

14 15. 40 C.F.R. § 61.145(a) states that 40 C.F.R.
15 §§ 61.146 and 61.147 apply, with exceptions not relevant to
16 this action, to each owner or operator of a demolition or
17 renovation operation if the amount of friable asbestos material
18 in a facility being demolished or renovated is at least 80
19 linear meters (260 linear feet) on pipes or at least 15
20 square meters (160 square feet) on other facility components.

21 16. 40 C.F.R. § 61.146 requires each owner or operator
22 of a demolition or renovation operation where there is the
23 regulated amount of asbestos to provide the Administrator of
24 EPA with written notification of intention to demolish or renovate,
25 setting forth specified information, prior to the commencement

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1 of the operation.

2 17. 40 C.F.R. § 61.147, in relevant part, requires
3 each owner or operator to comply with certain work practices
4 to prevent emission of particulate asbestos material to the
5 outside air.

6 18. 40 C.F.R. § 61.152(b) requires each owner or
7 operator to "discharge no visible emissions to the outside
8 air during the collection, processing (including incineration),
9 packaging, transporting or deposition of any asbestos-containing
10 waste material generated by the source"

11 THE NESHAPs VIOLATIONS

12 19. On or about or prior to February 20, 1985, defendant
13 engaged in demolition activities or renovation activities or both
14 within the definition of the NESHAP regulations, 40 C.F.R. § 61.141,
15 at the Coleman Dock Ferry Terminal ("the facility") located at
16 Pier 52, in Seattle, Washington. Said activities involved the
17 removal or stripping or both of friable asbestos material as
18 defined in 40 C.F.R. § 61.141.

19 20. The demolition or renovation operation involved
20 the removal or stripping of quantities of friable asbestos material
21 in excess of 160 square feet or in excess of 260 linear feet at
22 the facility and therefore the operation came under the NESHAP
23 regulations, 40 C.F.R. § 61.145(a).

24 21. The State of Washington is liable because it owns
25 the facility in question and because it operated the renovation

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1 operations.

2 FIRST CLAIM FOR RELIEF

3 22. Paragraphs 1 through 21 are incorporated herein
4 by reference as if fully alleged below.

5 23. Defendant failed to provide prior written notice
6 of intention to renovate or demolish in violation of 40 C.F.R.
7 § 61.146 and Sections 112(c) and 114(a)(1)(B) of the Clean Air
8 Act, 42 U.S.C. § 7412(c) and § 7414(a)(1)(B).

9 SECOND CLAIM FOR RELIEF

10 24. Paragraphs 1 through 21 are incorporated herein by ..
11 reference as if fully alleged below.

12 25. On or about or prior to February 20, 1985, defendant
13 removed friable asbestos materials from the facility by drilling
14 a series of holes in the ceiling of the car deck.

15 26. This removal was performed in violation of the work
16 practices set forth at 40 C.F.R. § 61.147, because defendant failed
17 to keep the friable asbestos materials adequately wetted. Defend-
18 ant's actions constitute a violation of 40 C.F.R. § 61.147 and
19 Section 112(c) and (e) of the Clean Air Act, 42 U.S.C. § 7412(c)
20 and (e).

21 THIRD CLAIM FOR RELIEF

22 27. Paragraphs 1 through 21 are incorporated herein
23 by reference as if fully alleged below.

24 28. Defendant did not ensure that the friable asbestos
25 material remained wet until collected for disposal in violation

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1 of 40 C.F.R. § 61.147(e) and Section 112(c) and (e) of the Clean
2 Air Act, 42 U.S.C. § 7412(c) and (e).

3 FOURTH CLAIM FOR RELIEF ..

4 29. Paragraphs 1 through 21 are incorporated herein
5 by reference as if fully alleged below.

6 30. On information and belief, defendant discharged
7 visible emissions to the outside air during the collection,
8 processing, packaging, transporting, or deposition of asbestos-
9 containing waste material generated at the facility. The
10 defendant failed to use one of the disposal methods specified
11 in 40 C.F.R. § 152(b) (1), (2), or (3), thereby violating 40
12 C.F.R. § 152(b) and Section 112(c) and (e) of the Act, 42 U.S.C.
13 § 7412(c) and (e).

14 RELIEF REQUESTED

15 31. Section 113(b) of the Clean Air Act, 42 U.S.C.
16 § 7413(b) authorizes the Administrator of EPA to commence a
17 civil action for injunctive relief, or for the assessment of a
18 civil penalty of not more than \$25,000 per day of violation, or
19 for both whenever any person violates Section 112(c), (e), and
20 114(a)(1)(B) of the Clean Air Act, 42 U.S.C. § 7412(c), (e), and
21 § 7414(a)(1)(B) by violating a NESHAP.

22 32. Unless restrained by an Order of this Court,
23 defendant may continue to violate the Clean Air Act, 42 U.S.C.
24 § 7401, et seq., and the asbestos NESHAP, 40 C.F.R. Part 61,
25 subpart M.

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1 33. Defendant is liable for both equitable relief
2 and for the assessment of civil penalties under Section 113(b)
3 of the Clean Air Act, 42 U.S.C. § 7413(b) for the violations
4 alleged above.

5 WHEREFORE, plaintiff, United States of America,
6 respectfully prays that this Court:

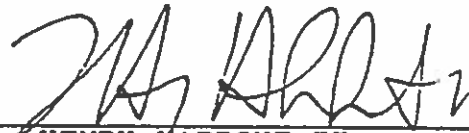
7 a. Permanently enjoin the defendant from further
8 violations of the Clean Air Act and the asbestos NESHAP, 40
9 C.F.R. Part 61;

10 b. Assess civil penalties of \$25,000 for each day of
11 each violation of EPA's regulations and the Clean Air Act;

12 c. Award plaintiff its costs and disbursements in
13 this action; and

14 d. Grant such other and further relief as this Court
15 may deem just and proper.

16 Respectfully submitted,

17 

18 F. HENRY HABICHT II
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21 U.S. Department of Justice
22 Washington, D.C. 20530
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24
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